

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re: OWEN S CORNING, et al.	)	Chapter 11
Debtors.	)	
	)	
	)	Case Nos. 003837 through 003854
<hr style="border: 0.5px solid black;"/>		
In re: W.R. GRACE & CO., et al.	)	Chapter 11
Debtors.	)	
	)	
	)	Case Nos. 01-1139 through 01-1200
<hr style="border: 0.5px solid black;"/>		
In re: USG CORPORATION, a Delaware Corporation, et al.	)	Chapter 11
	)	
	)	
Debtors.	)	
	)	Case Nos. 002094 through 00-2104

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**DECLARATION OF JOANNE B. WILLS IN SUPPORT OF  
MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION  
OF D.K. ACQUISITION PARTNERS, L.P., FERNWOOD ASSOCIATES, L.P.  
AND DEUTSCHE BANK TRUST COMPANY AMERICAS TO DISQUALIFY THE  
HONORABLE ALFRED M. WOLIN, UNITED STATES DISTRICT JUDGE, FROM  
FURTHER PARTICIPATION IN THESE JOINTLY ADMINISTERED CASES**

I, Joanne Wills, being duly sworn, declare as follows:

1. I am a partner at the law firm of Klehr, Harrison, Harvey, Branzburg & Ellers LLP, counsel to D.K. Acquisition Partners, L.P., Fernwood Associates, L.P. and Deutsche Bank Trust Company Americas (collectively, the “Movants”), creditors in the above-captioned case.
  
2. At no time during the pendency of the W.R. Grace & Co., et al. bankruptcy proceedings have any of the Movants been a member of the Official Committee of Unsecured Creditors of W.R. Grace & Co. et al.

3. If I were called upon to testify, I could and would testify to each of the facts set forth herein based upon my review of the relevant documents and court dockets.

4. Attached hereto, at the indicated tab letters, are true and correct copies of certain documents filed in the above-captioned case, currently pending before the Court, which have been downloaded from the Court's PACER system, the PACER system of the Bankruptcy Court for the District of New Jersey (Camden Division) and/or the official website for the Third Circuit Court of Appeals.

A	Designation of a District Court Judge for Service in Another District Within the Circuit dated November 27, 2001
B	Letter Opinion dated October 23, 2003
C	Case Management Order and Order to Show Cause Concerning Motion to Recuse Alfred M. Wolin, U.S.D.J. dated October 28, 2003
D	Order of the Third Circuit Court of Appeals dated October 30, 2003
E	Response of the District Court Judge to the Petition for a Writ of Mandamus, Pursuant to the Invitation of the Court of Appeals
F	Order of the Third Circuit Court of Appeals dated November 3, 2003
G	Affidavit of C. Judson Hamlin dated November 14, 2003
H	Affidavit of David R. Gross dated November 14, 2003
I	Affidavit of William A Dreier dated November 14, 2003
J	Affidavit of Francis E. McGovern dated November 14, 2003
K	Affidavit of John E. Keefe, Sr. dated November 14, 2003
L	Supplemental Response of the District Court Judge to the Petition for a Writ of Mandamus, Pursuant to the Invitation of the Court of Appeals
M	Sur-Reply of the District Court Judge to the Petition for a Writ of Mandamus, Pursuant to the Invitation of the Court of Appeals

N	Movants' Discovery Requests
O	Transcript of December 23, 2003 pp. 1, 93 and 101
P	Transcript of December 24, 2003 Hearing
Q	Order of the District Court dated December 26, 2003
R	Order Designating Court Appointed Consultants and Special Masters dated December 28, 2001
S	Transcript of January 6, 2004 of C. Judson Hamlin (select pages)
T	Transcript of January 5, 2004 of David R. Gross (select pages)
U	Transcript of January 6, 2004 of John E. Keefe, Sr. (select pages)
V	Transcript of January 6, 2004 of Francis E. McGovern (select pages)
W	Transcript of January 5, 2004 of William A. Dreier (select pages)
X	Order Appointing Legal Representative of Present and Future Holders of Asbestos-Related Demands in G-I's Chapter 11 Case dated October 10, 2001
Y	Order 1) Partially Withdrawing The Reference And 2) Governing Applications For The Allowance Of Fees And Expenses To Court Appointed Advisors dated March 19, 2002
Z	<p>Timesheet Submitted by David R. Gross, excerpted from First Application Of Budd, Lerner, Gross, Rosenbaum, Greenberg &amp; Sade, P.C. On Behalf Of David R. Gross As Court Appointed Advisor For Compensation Of Services Rendered And Reimbursement Of Expenses For The Period From December 27, 2001 Through February 28, 2002 (Submitted in the Five Asbestos Cases)</p> <p>Timesheet Submitted by David R. Gross, excerpted from First Application Of D.R. Gross &amp; Associates For Services Rendered And Reimbursement Of Expenses On Behalf Of David R. Gross As A Court Appointed Advisor For The Period From September 1, 2002 Through November 7, 2002 (Submitted in the Five Asbestos Cases)</p> <p>Timesheet Submitted by David R. Gross, excerpted from Second Application Of Budd, Lerner, Rosenbaum, Greenberg &amp; Sade, P.C. On Behalf Of The Court Appointed Advisor David R. Gross For An Interim Allowance Of Fees For Actual And Necessary Services Rendered And For Reimbursement Of Expenses Incurred For The Period From March 1,</p>

	<p>2002 Through August 31, 2002 (Submitted in the Five Asbestos Cases)</p> <p>Timesheet Submitted by David R. Gross, excerpted from First Application Of Saiber Schlesinger Satz &amp; Goldstein, LLC For Compensation For Services Rendered And Reimbursement Of Expenses On Behalf Of David R. Gross As A Court Appointed Advisor For The Period From November 11, 2002 Through March 31, 2003 (Submitted in the Five Asbestos Cases)</p>
AA	Memorandum of Whitney Chelnick dated January 23, 2002
BB	Meeting Notes
CC	<p>Timesheet Submitted by C. Judson Hamlin, excerpted from First Application Of C. Judson Hamlin As Court Appointed Advisor For Compensation Of Services Rendered And Reimbursement Of Expenses For The Period From January 7, 2002 Through February 28, 2002 (Submitted in the Five Asbestos Cases)</p> <p>Timesheet Submitted by C. Judson Hamlin, excerpted from Second Fee Application Of Purcell, Ries, Shannon, Mulcahy &amp; O'neill On Behalf Of C. Judson Hamlin For Compensation For Services Rendered And Reimbursement Of Expenses As A Court Appointed Advisor For The Period From March 1, 2002 Through October 24, 2002 (Submitted in the Five Asbestos Cases)</p> <p>Timesheet Submitted by C. Judson Hamlin, excerpted from Third Application Of Purcell, Ries, Shannon, Mulcahy &amp; O'neill On Behalf Of Judson Hamlin For Compensation For Services Rendered And Reimbursement Of Expenses As A Court Appointed Advisor For The Period From March 10, 2003 Through April 10, 2003 (Submitted in the Five Asbestos Cases)</p>
DD	Timesheets for Francis E. McGovern
EE	Timesheets for John E. Keefe, Sr.
FF	<p>Timesheets submitted by David R. Gross, excerpted from First, Fifth, And Sixth Applications Of Budd Lerner Gross Rosenbaum Greenberg &amp; Sade, P.C., Local Counsel To The Legal Representative Of Present And Future Holders Of Asbestos-Related Demands For Allowance Of Interim Compensation For Services Rendered And Reimbursement Of Expenses For The Period Of December 18, 2001 Through June 30, 2002; And Fifth And Seventh Applications Of Saiber Schlesinger Satz &amp; Goldstein, Llc, As Local Counsel To The Legal Representative Of Present And Future Holders Of Asbestos-Related Demands For Allowance Of Interim Compensation For Services Rendered And Reimbursement Of Expenses For The Period Of March 1, 2003 Through June 30, 2003 (Submitted in</p>

	<p>the G-I Holdings case)</p> <p>Timesheets Submitted by C. Judson Hamlin, excerpted from Third, Sixth, Seventh, Eighth, Tenth, Fourteenth, Fifteenth, Seventeenth, Eighteenth, Nineteenth, And Twentieth Applications Of C. Judson Hamlin As Legal Representative Of Present And Future Holders Of Asbestos-Related Demands For The Allowance Of Interim Compensation For Services Rendered And Reimbursement Of Expenses, For The Period Of March 1, 2002 Through August 31, 2003 (Submitted in the G-I Holdings case)</p>
GG	<p>Transcript of November 17, 2003 Hearing pp. 30-13</p> <p>Objection of the United States Trustee to Application of the Debtors for the Appointment of C. Judson Hamlin as Legal Representative for Future Claimants</p> <p>London Market Insurers' Objection to Debtors' Application for the Appointment of C. Judson Hamlin as Legal Representative for Future Claimants</p> <p>Objection of the Unofficial Committee of Unsecured Creditors to the Application Of Debtors Pursuant To 11 U.S.C. §§ 105, 327 And 524(G)(4)(B), For The Appointment Of C. Judson Hamlin As Legal Representative For Future Claimants</p> <p>Objection of the Official Committee of Unsecured Creditors to the Application Of Debtors Pursuant To 11 U.S.C. §§ 105, 327 And 524(G)(4)(B), For The Appointment Of C. Judson Hamlin As Legal Representative For Future Claimants</p>
HH	Timesheets for William A. Dreier
II	Affidavit of Tony Yoseloff, sworn to January 15, 2004
JJ	Movants' Affidavits
KK	Application Of Debtors Pursuant To 11 U.S.C. §§ 105, 327 And 524(G)(4)(B), For The Appointment Of C. Judson Hamlin As Legal Representative For Future Claimants

This 15th day of January, 2004

/s/ Joanne B. Wills  
Joanne B. Wills (Del. Bar No. 2357)

**Penalty for filing false statement: Fine up to \$500,000.00 or imprisonment up to 5 years or both. 18 U.S.C. §§ 152 and 3571.**

## **EXHIBIT A**

NOV-27-2001 14:08

EDWARD R. BELKER

215 531 1211 P.03/04

DESIGNATION OF A DISTRICT JUDGE  
FOR SERVICE IN ANOTHER DISTRICT WITHIN THE CIRCUIT

WHEREAS, in my judgment the public interest so requires NOW, THEREFORE, pursuant to the provisions of Title 28 U.S.C. § 292(b), I do hereby designate and assign the Honorable Alfred M. Wolin of the United States District Court for the District of New Jersey to hold court in the District of Delaware during the period beginning November 27, 2001 and ending November 27, 2002, and for such additional time thereafter as may be required to complete unfinished business in the following cases:

Armstrong Work Industries	No. 00-4471
Federal-Mogul	No. 01-10578
USA	No. 01-2094
W.R. Grace	No. 01-1139
Owens Corning	No. 00-3837

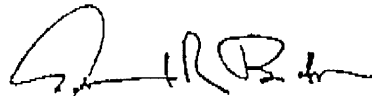
This order is entered after consultation with and with the assent of Chief Judge Sue L. Robinson, Judge Joseph J. Farnan, Jr., Judge Roderick R. McKelvie and Judge Gregory M. Sleet of the District of Delaware. As Chief Judge of the Court of Appeals and presiding officer of the Judicial Council of the Third Circuit, it is my considered judgment that these bankruptcy cases, which carry with them tens of thousands asbestos claims, need to be consolidated before a single judge so that a coordinated plan for management can be developed and implemented. It is contemplated that Judge Wolin will assign a portion of these cases to various bankruptcy judges sitting in the District of Delaware so they may assist in moving these matters forward. As a

NOV-27-2001 14:08

EDWARD R. BECKER

215 597 7217 P.04/04

significant portion of the asbestos cases in this country are proceeding under the aegis of this litigation, I deem this assignment and consolidation critically important to the administration of justice.



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Edward R. Becker  
Chief Judge of the Third Judicial Circuit

Dated: 11-27-01



## **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

CHAMBERS OF  
ALFRED M. WOLIN  
JUDGE

MARTIN LUTHER KING JR. FEDERAL BUILDING  
50 WALNUT ST., ROOM 4069  
P.O. BOX 999  
NEWARK, NJ 07101-0999  
(973)645-2580

October 23, 2003

**LETTER OPINION - NOT FOR PUBLICATION  
ORIGINAL FILED WITH THE CLERK OF THE COURT**

To all Counsel

**Re: In re: Owens Corning, et al.**

Dear Counsel:

This matter has been opened before the Court upon its own motion. By motion dated October 10, 2003, titled "Motion to Recuse the Honorable Alfred M. Wolin, United States District Judge, from Further Participation in These Jointly Administered Cases" (the "Motion"), certain creditors in the above-referenced chapter 11 case seek the recusal of this Court. By its Order dated October 15, 2003, this Court partially withdrew the reference of this case to the Bankruptcy Court with respect to the Motion, and suspended all deadlines for opposition briefs and a hearing. For the reasons set forth below, the Court will stay all further proceedings concerning the Motion including discovery

by document request, deposition or otherwise, pending further Order of the Court.

This Court intends to treat the Motion in the same manner as it treats all applications before it - fairly, on the merits, and with ample opportunity for all sides to air their positions. However, it is a commonplace observation that motions to recuse a court are susceptible to abuse and "are sometimes driven more by litigation strategies than by ethical concerns." In re Cargill, Inc., 66 F.3d 1256, 1262-63 (1st Cir. 1995), cert. denied, 517 U.S. 1156 (1996); see also FDC v. Sweeney, 136 F.3d 216, 220 (1st Cir. 1992); Thomas v. Trustees for Columbia Univ, 30 F. Supp. 2d 430, 431 (S.D.N.Y. 1998). The courts have always been careful to confine recusal to those grounds specified by Congress. E.g. New York City Housing Dev. Corp. v. Hart, 796 F.2d 976, 981 (7th Cir. 1986).

At present, this Court has no information one way or the other regarding the motives behind the Motion, besides those set forth in the papers themselves. However, the movants state their intention to seek discovery of several parties, including persons acting pursuant to the appointment of this Court. It has been reported to the Court that requests for the production of documents and deposition subpoenas have already been served.

The Court's deference to the movants' right to have their application thoroughly explored and impartially judged need not

cause the Court to abdicate its duty to manage the proceedings before it. See Landis v. North Am. Co., 299 U.S. 248, 254 (1936) (court has inherent power "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"). Moreover, as the Bankruptcy Appellate Panel found in Goodwin v. Durkin, 194 B.R. 214, 226 (B.A.P. 9th Cir. 1996), the mere filing of a motion to recuse does not preclude at least a preliminary review of the merits of the motion before discovery is permitted to proceed. In Goodwin, the panel found that, in the absence of a showing of a "reasonable suspicion that the judge was biased or prejudiced," such discovery would amount to no more than a "fishing expedition." Id.

The Court intends to set forth a case management order or orders governing further proceedings on the Motion in the near future. Until then, and until the prima facie merits of the Motion have been tested by the adversarial process, the Court cannot permit discovery or other related proceedings to go forward. The risk of disruption to the business of the Court and the case as a whole is palpable. That a recusal motion may be brought for an improper purpose has been too widely recognized to be ignored.

Therefore, pending the case management order(s) mentioned above, and for the reasons expressed in this Letter Opinion, the

Court will Order that all proceedings, including discovery proceedings, relative to the Motion be stayed. An appropriate Order is attached.

Very truly yours,

A handwritten signature in dark ink, appearing to read "A. Wolin". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

ALFRED M. WOLIN  
U.S.D.J.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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In re:	:	Chapter 11
	:	Delaware Bankruptcy
OWENS CORNING, et al.	:	Case Nos. 00-3837 to 3854 (JKF)
	:	Jointly Administered
Debtors.	:	
	:	<b>ORDER</b>

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This matter having been opened before the Court on its own motion; and this Court having partially withdrawn the reference to the Bankruptcy Court of the above-captioned chapter 11 case with respect to the motion titled "Motion to Recuse the Honorable Alfred M. Wolin, United States District Judge, from Further Participation in These Jointly Administered Cases" (the "Motion"); and for the reasons set forth in the Letter Opinion filed herewith and other good cause appearing

IT IS this <sup>23</sup> day of October, 2003

ORDERED that all further proceedings related to the Motion are hereby stayed, and it is further

ORDERED that, without limitation of the foregoing paragraph, any subpoena, request for the production of documents, or other discovery now outstanding related to the Motion shall be stayed, and it is further

ORDERED that the stay shall continue until further Order of  
the Court.

A handwritten signature in cursive script, appearing to read "A. Wolin".

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ALFRED M. WOLIN, U.S.D.J.

## **EXHIBIT C**



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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In re:	:	Chapter 11
	:	Delaware Bankruptcy
OWENS CORNING, et al.	:	Case Nos. 00-3837 to 3854 (JKF)
	:	Jointly Administered
Debtors.	:	

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**CASE MANAGEMENT ORDER AND ORDER TO SHOW CAUSE CONCERNING MOTION  
TO RECUSE ALFRED M. WOLIN, U.S.D.J.**

This matter having been opened by the Court upon its own motion in the above-captioned chapter 11 case; and this Court having partially withdrawn the reference to the Bankruptcy Court of the above captioned chapter 11 case with respect to the motion titled "Motion to Recuse the Honorable Alfred M. Wolin, United States District Judge, from Further Participation in These Jointly Administered Cases" (the "Motion to Recuse"); and the Court having stayed all proceedings in this matter by Order dated October 23, 2003, in anticipation of issuing this Case Management Order; and good cause appearing

It is on this ~~28~~<sup>74</sup> day of October, 2003

ORDERED that those persons named Court Appointed Advisors in this Court's Order dated December 28, 2001 (the "Appointment Order"), shall, on or before November 14, 2003,

1. review the Motion to Recuse and the affidavits filed in support of the Motion to Recuse,
2. review their time records recording time spent in execution of the duties set forth in the Appointment Order and all other activities whereby the Court

Appointed Advisor provided advice or any other assistance to the Court,

3. file with the Court and serve on all interested parties an affidavit stating under oath all occasions on which the Court Appointed Advisor provided advice or other assistance in connection with the above-captioned chapter 11 case and the chapter 11 case titled In re G-1 Holdings, Inc., including the substance of that advice and/or the nature of the assistance, and including without limitation of the foregoing any advice of a legal nature on a matter pending or likely to come before the Court and any activity in the nature of mediation of disputes before the Court or likely to come before the Court,

and it is further

ORDERED that the affidavits provided by the Court Appointed Advisors pursuant to this Order shall be full and complete and in the spirit of cooperation with the Court's intent to fully reveal all aspects of the Court Appointed Advisors' communications with and assistance to the Court, if any, including without limitation any knowledge of deliberations of the Court with respect to matters pending before it or likely to come before it to which the Court Appointed Advisors may be privy, and it is further

ORDERED that the content of the affidavits of the Court Appointed Advisors filed pursuant to this Order shall be limited to matters concerning the above-captioned chapter 11 case and the chapter 11 case titled In re G-1 Holdings, Inc., and it is further

ORDERED that the content of the affidavits of the Court Appointed Advisors shall not be limited by any privilege or rule

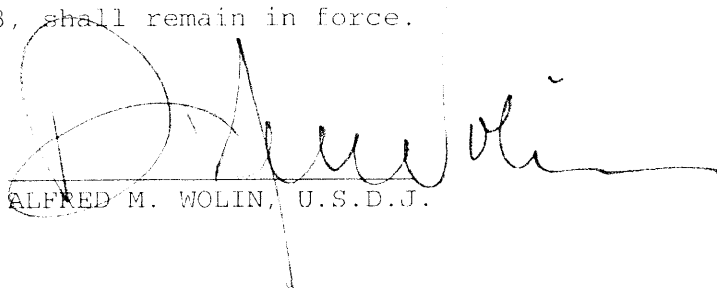
of confidentiality regarding their communications with the Court, provided however that this paragraph shall not be construed to waive any privilege or rule of confidentiality with respect to communications or activities of the Court's regular staff regardless of subject matter, and it is further

ORDERED that any interested party may show cause why the Motion to Recuse should be denied without further proceedings or, in the alternative, why further proceedings including discovery should be had on the Motion to Recuse, by filing a brief not to exceed 30 pages with the Court on or before November 28, 2003, and it is further

ORDERED that any interested party may file a brief in response to a brief filed pursuant to the foregoing paragraph not to exceed 15 pages, on or before December 5, 2003, and it is further

ORDERED that no oral argument or hearing shall be heard on this Order to Show Cause except as may be scheduled by the Court on its own motion, and it is further

ORDERED that, except as modified by this Order, the stay of proceedings on the Motion to Recuse provided by this Court's Order of October 23, 2003, shall remain in force.



ALFRED M. WOLIN, U.S.D.J.

## **EXHIBIT D**

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 03-4212

IN RE: KENSINGTON INTERNATIONAL LIMITED and  
SPRINGFIELD ASSOCIATES, LLC, Petitioners  
(Related to U. S. Bankruptcy Court for the District of Delaware No. 00-03837)

Present: FUENTES, SMITH and GARTH, Circuit Judges

**ORDER**

It is hereby **ORDERED** on this 30<sup>th</sup> day of October, 2003, effective 12:00 Noon:

All proceedings affected by this Petition, and in particular all substantive proceedings before the relevant Bankruptcy Court and the District Court pertaining to *In re: Owens Corning, et al.* and bearing the case numbers 00-3837 to and including 00-3854, be and the same are hereby stayed pending a ruling or further action on the Mandamus Petition by this Court; and

It is **FURTHER ORDERED** that to the extent the District Court's October 28, 2003 Order requires actions to be taken and information to be furnished to the District Court concerning and affecting the Motion for Recusal which is the subject of the aforesaid Petition for Mandamus, the said Order is exempt from the stay herein ordered; and

It is **FURTHER ORDERED** in accordance with F.R.A.P. 21(b)(1) all Respondents affected by the Petition for Mandamus are hereby ordered to answer the aforesaid Petition and to serve a copy of the Answer(s) on all parties; and

It is **FURTHER ORDERED** that the original of the aforesaid Answer(s) be filed with the Clerk of this Court and filed with each member of this Court's panel no later than 12 Noon on Thursday, November 6, 2003; and

It is **FURTHER ORDERED** that the Answer(s) to be filed with each member of this Court's panel shall be filed at the time and date aforesaid by Federal Express at the addresses of each member of the panel as noted below; and

It is **FURTHER ORDERED** in accordance with F.R.A.P. 21(b)(4), the District Court Judge is invited to address and respond to the Petition. The original of the District Court's response, if any, should be filed with the Clerk of this Court and with each member of the panel by Federal Express, if necessary, at the time and date above noted; and

It is **FURTHER ORDERED** that the Clerk of this Court is directed to serve this Order on all parties and persons directed or invited to respond.

For the Court:

/s/ Julio M. Fuentes

Circuit Judge

Dated: October 30, 2003

nmb/cc: All Counsel of Record

Honorable Julio M. Fuentes  
Martin Luther King Federal Bldg. & Courthouse  
50 Walnut Street ~ Room 5032  
Newark, New Jersey 07102

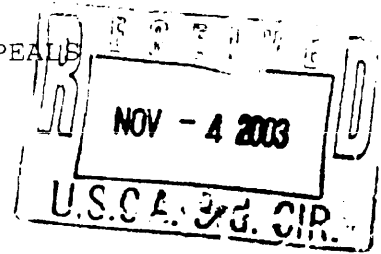
Honorable D. Brooks Smith  
Allegheny Professional Center ~ Suite 203  
1798 Old Route 220 North  
Duncansville, PA 16635

Honorable Leonard I. Garth  
Martin Luther King Federal Bldg. & Courthouse  
50 Walnut Street ~ Room 5040  
Newark, New Jersey 07102

## **EXHIBIT E**



Case No. 03-4212  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT



In re: KENSINGTON :  
INTERNATIONAL LIMITED :  
and SPRINGFIELD :  
ASSOCIATES, LLC, : (Bankruptcy Case No. 00-03837)  
 : (Owens Corning, et al.)  
Petitioners, :  
\_\_\_\_\_ :

On a Petition for a Writ of Mandamus to the Honorable Alfred M.  
Wolin, United States District Judge

**RESPONSE BY THE DISTRICT COURT JUDGE TO THE PETITION FOR A WRIT  
OF MANDAMUS, PURSUANT TO THE INVITATION OF THE COURT OF APPEALS**

TO THE HONORABLE JUDGES OF THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT GREETINGS:

This Court accepts the thoughtful invitation of the Court of  
Appeals issued by it pursuant to Federal Rule of Appellate  
Procedure 21(b)(4), and responds to the petition for a writ of  
mandamus to the extent this Court is able without addressing the  
substantive merits of the Motion to Recuse<sup>1</sup> now pending before  
it. The Court of Appeals will have noted that the petition at  
bar raises issues regarding whether this Court should be recused  
from presiding over the chapter 11 case titled In re Owens

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<sup>1</sup> This capitalized term refers to the motion filed in In re Owens Corning, 00-3837 et seq., titled "Motion to Recuse the Honorable Alfred M. Wolin, United States District Judge, from Further Participation in these Jointly Administered Cases."

Corning and issues regarding this Court's handling of the Motion to Recuse. In order to preclude any unwarranted conclusion that this Court has already decided the substantive merits of the motion to recuse in advance of all parties' opportunity to be heard, this response will address only the procedural points raised in the petition before the Court of Appeals.

Upon notification that the Motion to Recuse had been filed, this Court partially withdrew the reference to the Bankruptcy Court with respect to The Motion. The Court's purposes in doing so were several. First, it is generally recognized that a motion to recuse should generally be heard in the first instance by the judicial officer concerned. Silo v. City of Philadelphia, 593 F. Supp. 870, 872 (E.D. Pa. 1984) (Pollak, J.); see also United States v. Wilensky, 757 F.2d 594, 599-600 (3d Cir. 1985) ("decision of whether to recuse from hearing a matter lies within the sound discretion of the trial judge"). Second, this Court deemed it inappropriate and unfair to burden the Bankruptcy Court, over which this Court sits as the initial appellate tribunal, with the merits of the Motion to Recuse.

It happened that the Motion to Recuse was filed immediately before the Court's departure on a trip out of New Jersey for ten days. The undersigned judicial officer was scheduled to speak at a Commercial Law League conference in San Diego, California. The Court issued its Letter Opinion and Order dated October 23, 2003,

staying the matter, including discovery that had already been propounded, until it returned to the jurisdiction. The Court returned to its duty station on October 27, 2003. On October 28, the Court issued its Case Management Order and Order to Show Cause, as expressly anticipated in the October 23 Letter Opinion and Order.

As the Court of Appeals is aware, the subject of the Motion to Recuse is, in substantial part, concerned with certain persons who have been acting as Court Appointed Advisors pursuant to an Order of this Court entered December 28, 2001. The October 28, 2003, Case Management Order directed these persons to set forth by sworn affidavit the substance of all communications with the Court and/or all of their activities assisting the Court with respect to the In re Owens Corning chapter 11 case, and a matter known as In re G I Holding, Inc., pending in a different court. In the Order, the Court waived any privilege or rule of confidentiality that might apply with respect to any advice rendered by the Court Appointed Advisors. The parties were also invited to submit briefs by way of an Order to Show Cause to determine whether further proceedings should be had, including discovery, or, in the alternative, whether the Motion to Recuse should be dismissed as legally insufficient.

This Court believes that the Court of Appeals should be aware of certain historical events in the Owens Corning matter.

On December 20, 2001, this Court held a joint case management conference in all five of the asbestos-related bankruptcy cases before it, attended by approximately 200 attorneys and interested parties. At that conference, the Court announced publicly that the extraordinary size and complexity of these proceedings would require special measures. Among these, the Court further announced was the appointment of a committee of expert counsel with broad experience in mass-tort and asbestos litigation to assist the Court. As previously noted, these persons were appointed shortly thereafter, on December 28, 2001. A copy of the Order is attached. Since then, the Court has made task-specific assignments of the Court Appointed Advisors.

The five appointees are John E. Keefe, Sr., Esq., William Drier, Esq., C. Judson Hamlin, Esq., Professor Francis E. McCovern and David R. Gross, Esq. Messers Keefe, Drier and Hamlin are all former judges of the Appellate Division of the New Jersey Superior Court. For approximately ten years, Mr. Keefe was the designated judge responsible for administering asbestos personal injury litigation in the state system. Mr. Drier has authored a well-known treatise on products liability law. Mr. Hamlin has been involved with asbestos-related bankruptcies as far back as the Johns-Manville bankruptcy, the progenitor of all very large, asbestos-related bankruptcies and the model upon which the current statute 11 U.S.C. § 524(g) is based. Mr. Gross

was counsel for Johns-Manville even before its bankruptcy and is a nationally-prominent mass-tort and products liability lawyer. Professor McGovern is one of the most respected academics and neutrals in this field, and has assisted the federal judiciary for decades in complex litigation matters.

Thus, the involvement of all of the Court Appointed Advisors has been a matter of record for nearly two years. Because a Futures Representative and his counsel cannot be appointed in a bankruptcy without court approval, the involvement of Gross and Hamlin in In re G-I Holdings, Inc. must likewise have been public by virtue of their appointment in that case. That appointment, which presumably was not under seal, preceded their appointment by this Court. No party has objected to the involvement of any of the Court Appointed Advisors in any of the chapter 11 proceedings before this Court in the almost two years they have served. Nor has any objection been filed regarding their several fee applications to this Court.

It was represented to this Court in December of 2002 that a key issue in the Owens Corning bankruptcy was the resolution of a claim by the debtor and other potential plan proponents that the various subsidiaries of Owens Corning should be substantively consolidated for the purposes of the reorganization. It was represented at that time, and repeated since in papers filed with the Court, that substantive consolidation put certain bank

creditors of Owens Corning at risk for their recovery of well in excess of \$1 billion in debt guaranteed by these subsidiaries. Absent the consolidation, the Court understands that the banks recovery may approach 100 cents on the dollar.

By Order dated December 23, 2002, this Court withdrew the reference to the Bankruptcy Court of the substantive consolidation issue and appointed the Honorable Judith K. Fitzgerald, U.S.B.J., as settlement judge and Professor McGovern as mediator to explore the possibility of settlement. The Order also contemplated that the debtors and other parties intended to file a proposed plan of reorganization and that the motion for substantive consolidation was a part of that plan. It is, of course, "not at all unusual for a plan proponent . . . to seek a determination prior to the confirmation hearing as to the legitimacy of a particular provision of a proposed plan." In re Stone & Webster, Inc., 286 B.R. 532, 542 (Bankr. D. Del. 2002).

Settlement efforts failed and this Court held a bench trial lasting four weeks on the merits of the substantive consolidation motion. Meanwhile, the proposed plan had been filed. The plan proponents are the debtors-in-possession, the Official Committee of Asbestos Claimants, and the Representative of Future Claimants. The plan proponents and certain members of the unsecured creditors committee representing pre-petition bondholders of Owen Corning, the self-styled "Designated Members

of the Official Committee of Unsecured Creditors," prosecuted the substantive consolidation motion during the trial before this Court.

Aware that settlement efforts were ongoing through the summer and fall, this Court has nonetheless been reviewing the extremely extensive record and the many technical financial issues and is preparing an opinion resolving the substantive consolidation motion. That opinion had not issued, however, when the Motion to Recuse was filed. This Court believes that it is safe to presume that resolution of the substantive consolidation issue will be the single most momentous event in the life of this important bankruptcy, the successful conclusion of which will effect the fortunes of so many individual persons as well as corporate entities.

Meanwhile, as it enters its third year since the petition was filed, the Owens Corning bankruptcy has arrived at a critical point. The plan proponents have filed a disclosure statement and Judge Fitzgerald held a hearing on their motion to approve the disclosure statement on October 27, 2003. Of course, the plan that is the subject of the proposed disclosure statement assumes that the Court will rule in favor of the plan proponents' motion for substantive consolidation. Judge Fitzgerald has not yet ruled on the disclosure statement and presumably will not rule until this Court's opinion on substantive consolidation is

issued. She has stated on the record that, if this Court denies substantive consolidation, then the plan proponents will have to start again on a clean slate.

As this crisis in the Owens Corning reorganization effort approached, the commercial creditors have not been idle. The Motion to Recuse was filed by the bank creditors on October 10, 2003. Seven days later, on October 17, 2003, the unsecured creditors as a whole filed motion for the appointment of a chapter 11 trustee. On October 24, 2003, the commercial creditors moved to "re-structure" the representation of the Committee of Asbestos Claimants and the Futures Representative, which re-structuring would include disqualification of their present counsel and forfeiture of all of their fees. Brief in Support of Motion for Structural Relief Required to Eradicate the Legal and Ethical Conflicts of Asbestos Law Firms at 2 n.3. The Court learned that very extensive document and deposition subpoenas had been served in connection with the Motion to Recuse from the representations of counsel who wished to object and to move to quash, but were seeking the procedural guidance of the Court on how their objections should be presented.

Thus, on its return from California, the Court acted swiftly to take control of proceedings. The Court has a responsibility to ensure that the reorganization over which it presides is not disrupted by the actions of any particular constituency free of



judicial supervision. The Court is likewise responsible to see that persons who have served the Court ably and without objection by any party are not unfairly burdened. For this reason, the Court has solicited the affidavits of its Court Appointed Advisors and briefs setting forth the positions of all the parties.

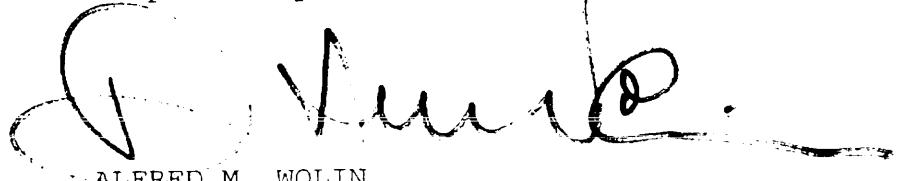
The Court is also responsible to ensure that any motion before it is presented for a proper purpose and not for purposes of delay or other, self-serving ends. The Court acknowledges this responsibility without derogation of its concurrent responsibility independently to inquire into the continued propriety of its presiding over the matters before it and regardless of the source or perceived motive behind a motion seeking recusal. Moreover, and contrary to the position taken by the petitioners before the Court of Appeals, this Court believes that it has acted with all deliberate speed in building a record and soliciting the positions of the parties, consonant with the responsibilities set forth above.

It is, therefore, erroneous to contend that the Court's decision to preliminarily test the merits of the Motion to Recuse discloses an intention to pre-judge the motion. It is also incorrect to maintain that the Court has stated its view of the legal standard to be applied, particularly whether the party seeking recusal must show actual bias or that merely a reasonable

perception of bias exists. This Court has stated and states again here that it will judge the Motion to Recuse on the law and facts presented after all parties have been heard in full. Moreover, the Court recognizes the need to resolve the motion as quickly as possible, regardless of jurisdictional issues, to minimize the inevitable harm that will impact the progress of the several asbestos-related bankruptcies under its supervision.

Lastly, as a factual matter, this Court states to the Court of Appeals that it has had no communications and possesses no knowledge regarding any aspect of the In re G-I Holdings, Inc. chapter 11 proceeding, except that it is pending before the Honorable Rosemary Gambardella, U.S.B.J., and the Honorable William G. Bassler, U.S.D.J. I have never discussed the substance of this case with any of the Court Appointed Advisors.

Respectfully submitted,



ALFRED M. WOLIN  
U.S.D.J.

November 3, 2003

12/28/03

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ARMSTRONG WORLD : Chapter 11  
 INDUSTRIES, INC., et al., : Case Nos. 00-4471, 00-4469,  
 : 00-4470  
 Debtors. :

1733

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 IN RE: W.R. GRACE & CO., : Chapter 11  
 et al., : Case Nos. 01-1139 through  
 : 0-1200  
 Debtors. :

1427

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 IN RE: FEDERAL-MOGUL : Chapter 11  
 GLOBAL, INC., T&N : Case Nos. 01-10578, et al.<sup>1</sup>  
 LIMITED, et al., :  
 :  
 Debtors. :

812

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 IN RE: USG CORPORATION, : Chapter 11  
 a Delaware Corporation, : Case Nos. 01-2094 through  
 et al., : 01-2104  
 :  
 Debtors. :

1095

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 IN RE: OWENS CORNING, : Chapter 11  
 et al., : Case Nos. 00-3837 through  
 : 00-3854  
 Debtors. :

3893

ORDER DESIGNATING COURT APPOINTED CONSULTANTS  
AND SPECIAL MASTERS

This matter having been opened by the Court upon its own motion in each of the above-captioned Chapter 11 cases; and the interested parties having been put on notice by the Court at the joint case management conference held on December 20, 2001, that the Court anticipated appointing special masters and/or case

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<sup>1</sup>See attached list.

management consultants to whom the Court may from time to time delegate certain authority to hear matters and to advise the Court on issues that may arise in these five large Chapter 11 cases; and for good cause shown

It is this 28<sup>th</sup> day of December, 2001

ORDERED that the following Order applies to the lead cases identified in the caption of this Order and to all cases filed as related cases thereto, and it is further

ORDERED that William A. Drier, Esq., David R. Gross, Esq., C. Judson Hamlin, Esq., John E. Keefe, Esq., and Professor Francis E. McGovern are hereby designated as Court Appointed Consultants to advise the Court and to undertake such responsibilities, including by way of example and not limitation, mediation of disputes, holding case management conferences, and consultation with counsel, as the Court may delegate to them individually, and it is further

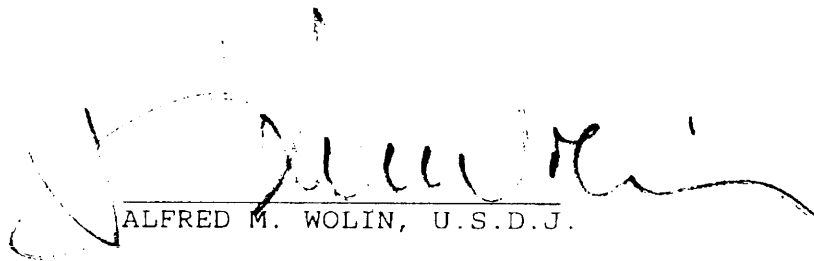
ORDERED that the parties are on notice that the Court may, without further notice, appoint any of the Court-Appointed Consultants to act as a Special Master to hear any disputed matter and to make a report and recommendation to the Court on the disposition of such matter, and it is further

ORDERED that William A. Drier, Esq., is hereby appointed Special Master in the matter of In re W.R. Grace & Co., Bankruptcy No. 01-1139 through 01-1200, to hear all disputed matters in that Chapter 11 case for which the Court's Order of

ATTACHMENT

Reference may be withdrawn from the Honorable Judith K. Fitzgerald, United States Bankruptcy Judge, and it is further

ORDERED that the fees of the Court Appointed Consultants and Special Master(s) shall be borne by the debtors in such manner and apportionment as this Court or the Bankruptcy Courts may hereinafter direct.



ALFRED M. WOLIN, U.S.D.J.

ATTACHMENT

**IN RE: FEDERAL-MOGUL GLOBAL, INC.**  
**Case Numbers**

01-10578	01-10643	01-10700	01-10750
01-10580	01-10644	01-10701	01-10751
01-10582	01-10646	01-10702	01-10752
01-10585	01-10647	01-10703	01-10753
01-10586	01-10649	01-10704	01-10754
01-10587	01-10650	01-10705	01-10755
01-10589	01-10651	01-10706	01-10756
01-10591	01-10652	01-10707	01-10757
01-10593	01-10653	01-10708	01-10758
01-10594	01-10654	01-10710	01-10759
01-10596	01-10655	01-10711	01-10760
01-10598	01-10656	01-10712	01-10761
01-10599	01-10657	01-10713	01-10762
01-10600	01-10658	01-10714	01-10763
01-10601	01-10659	01-10715	01-10764
01-10603	01-10660	01-10716	01-10765
01-10604	01-10661	01-10717	01-10766
01-10605	01-10662	01-10718	01-10767
01-10606	01-10664	01-10719	01-10768
01-10608	01-10665	01-10721	01-10769
01-10610	01-10666	01-10722	01-10770
01-10611	01-10668	01-10723	01-10771
01-10613	01-10669	01-10724	01-10772
01-10614	01-10672	01-10726	01-10773
01-10615	01-10673	01-10727	01-10774
01-10617	01-10675	01-10728	
01-10618	01-10682	01-10729	
01-10619	01-10683	01-10730	
01-10620	01-10684	01-10731	
01-10621	01-10685	01-10732	
01-10622	01-10686	01-10733	
01-10623	01-10687	01-10734	
01-10625	01-10688	01-10736	
01-10626	01-10689	01-10737	
01-10627	01-10690	01-10739	
01-10629	01-10691	01-10741	
01-10630	01-10692	01-10742	
01-10632	01-10693	01-10743	
01-10633	01-10694	01-10744	
01-10634	01-10695	01-10745	
01-10637	01-10696	01-10746	
01-10638	01-10697	01-10747	
01-10640	01-10698	01-10748	
01-10641	01-10699	01-10749	

ATTACHMENT

## **EXHIBIT F**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 03-4212

*In re* Kensington International Limited and Springfield Associates, LLC, Petitioners  
(Related to U.S. Bankruptcy Court for the District of Delaware No. 00-3837)

**ORDER**

Upon consideration of the expedited motion of Owens Corning, et al. for clarification of October 30, 2003 Order (the "Motion"); and the Court being satisfied with the representations made in the Motion that the relief sought therein is necessary and in the best interests of the Debtors' estates; and the Court having determined that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein; and after due consideration thereof; and for good and sufficient cause appearing therefore, it is hereby

ORDERED, DECREED and ADJUDGED, this 3<sup>rd</sup> day of November, 2003 that:

1. The stay imposed by this Order applies only to those proceedings for which the reference has been withdrawn and are pending solely before Judge Wolin, namely asbestos related issues and certain matters relating to Movants' proposed plan of reorganization.
2. The briefing schedule is hereby modified to permit all respondents to submit responses to the Emergency Petition for Writ of Mandamus on November 21, 2003, five (5) business days after the District Court's Advisors submit their affidavits to the District Court.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "John M. Wolin", is written over a horizontal line.

Dated: November 3, 2003  
nmb/cc: All Counsel of Record